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SUNY/CID
Legislative Strengthening Program/Malawi

**QUARTERLY PROGRESS REPORT,
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OVERVIEW

This is the second **Quarterly Progress Report** of the Malawi National Assembly Legislative Strengthening Program. The first report had focused on the program's formative months. The program has since moved on. This report discusses some of the program activities that have been carried out. Realising, however, the relevance of the environment in which the program is being implemented, the report also covers a number of events that have a bearing on the project.

A. THE POLITICAL CLIMATE

1. **Former President Returns Home**

The former state president Bakili Muluzi returned home on Sunday 9th July from the United Kingdom where he had been for six months. He had gone to the UK to seek medical attention for a dislocated disc. Muluzi, who had campaigned very strenuously for President Bingu wa Mutharika, has been at logger heads with his protégé following a fallout that grew to a head when President Mutharika resigned from the then ruling party - UDF to form his own party – the DPP. The DPP has a very small presence in the House with the opposition controlling proceedings.

The former President again departed on Saturday 23rd September to South Africa for a follow-up medical check up. He is expected to be in South Africa for about two weeks.

2. **Former President Muluzi Arrested**

President Mutharika has made the fight against corruption a central piece of his Government's development agenda. His predecessor is perceived by many to have been at the center of a number of corruption scandals. One such scandal is over a number of donations to the nation that were allegedly diverted into the former President's personal account. He was arrested for his involvement in this scandal. His arrest was not a total surprise as it had been rumored for a very long period. What was unexpected was the timing and the resulting reaction from the Government.

The National Assembly was meeting during the month of July to discuss, *inter alia*, the 2006/7 Budget. Given the make-up of the House, it was politically inept to arrest the former president during this period as the Government needed the goodwill of the opposition to secure the passage of the Budget. The reaction from the Government was expectedly swift. It suspended the Anti Corruption Bureau Chief. No reasons were ever proffered for the suspension of the ACB Director. Speculation was rife that the ACB Chief is an MCP (Opposition Party) sympathizer who wanted to derail the passage of the Budget by arresting the former President fully knowing the political fallout that would arise. At a public rally, the President suggested that he was never advised of the impending arrest of the former President. The ACB chief has since been paid off.

Within days of the suspension of the ACB chief, the Director of Public Prosecutions discontinued the case against the former President. It appears this action also annoyed the President who proceeded to ask for the resignation of the DPP. He, too, has since left his position.

3. PAC refuses to confirm new ACB Chief

Following the resignation of the former ACB chief, the President appointed Police Commissioner responsible for Prosecutions and Legal Services, Tumalisye Ndovi to the position of Director. The appointment is by law subject to the confirmation of the Public Appointments Committee. The PAC met to consider this appointment and has declined to give its confirmation claiming that whilst the individual is qualified, he is however unsuitable. The PAC has refused to give any reasons on the pretext that doing so would be grossly unfair to the candidate as the PAC would reveal his weaknesses to the public. One member of the committee claims that the withholding of the approval may have resulted from the manner in which the previous incumbent was removed. It was thus aimed at showing the President as who ultimately controlled the House and its committees. Others claim that it has nepotistic foundations. A further school of thought base the reasons ostensibly on the refusal of the candidate to guarantee to the opposition-controlled PAC that he would resuscitate the former President's corruption case which the former DPP has discontinued.

4. ACB Audited

A newspaper article claimed that an internal audit of the ACB has revealed serious mismanagement of resources which has seen the Bureau spend millions on hiring vehicles instead of using those resources to pay for repairs of its own vehicles. The timing of the release of this report has been seen as an attempt by some to tarnish the image of the former ACB Director who is perceived to have been a victim of a political battle.

5. Vice President "Dismissed"

The Government announced that the Vice President – Dr Cassim Chilumpha – had constructively resigned his position because he had absented himself from many Cabinet meetings. The Vice President has sought relief from the Courts, asking the courts for judicial review of the Government's decision. Given that the Vice President's position is an elected position, one of the questions before the Courts is whether the President can unilaterally declare his position vacant under the Republican Constitution. Another aspect of the legal tussle is whether the rules of natural justice were observed. The Constitutional Court has ruled that the matter should firstly go for a pre-trial to resolve a number of preliminary issues.

This is a case that must be seen in its proper context. Following the resignation of President Mutharika from the UDF, the Vice President on the other hand, has continued to remain in the UDF. Thus, we have a scenario where the president and the vice president belong to two different parties – one in government and the other in opposition. It is obvious that there is no love lost between the two. Thus whatever the decision of the courts will be, it is clear that the two will have trouble working together.

6. Crossing the Floor

Section 65 of the Republican Constitution renders a seat vacant when a Member decides to join another party which is represented in Parliament. This section has been subject of numerous legal actions. The President under referral powers has asked the Constitutional Court to issue an opinion as to what the provision means. However, before the Court could decide on the matter the NA asked the Court that it be included as a party so that it could be heard on the matter subject of the referral. In its ruling, the Court decided that the Speaker and the NA itself had no right to appear and be heard before the High Court hearing referral case as parties to the case. Both the Speaker and the NA were dissatisfied with that ruling and consequently appealed to the Supreme Court. The Supreme Court has decided that a Presidential referral is not a suit or an action and, therefore, there are no parties. *"It follows that neither the Speaker nor the NA can lawfully demand to become a party to a Presidential referral. The proper procedure is that all the necessary stakeholders and interested persons or bodies are invited to make submissions or representations, during the hearing of a Presidential referral. That is necessary in order to enable the Court, hearing the matter, to make an informed decision, after taking into account a wide spectrum of divergent views bearing on the matter under consideration."*

Following this decision, the Supreme Court has referred the matter back to the High Court now to hear the substantive referral matter and thereafter make a determination as to the meaning of Section 65.

7. MP is Imprisoned

Hon Lucius Banda, a UDF MP in the House was recently convicted of having forged a school certificate. He has been sentenced to serve 21 months imprisonment with hard labor. By reason of this conviction, his seat has been vacated and by-elections will have to be conducted soon. Meanwhile, he has lodged an appeal against both conviction and sentence.

8. AFORD President dies

Hon. Chakufwa Chihana, President of AFORD, who was one of his Party's two MPs in the House, passed away in a South African Hospital of a brain tumor during the quarter under review. He was accorded a State funeral. The battle to replace the late Hon. Chihana as MP and President of his party are hotting up. One of the hopefuls to stand for AFORD as MP is the late Chihana's son which has caused a division in the party as some believe that the son is being imposed on the electorate.

9. MP dies

Former Speaker Rodwell Munyenembe died a few months before this project was launched. Hon Mukwala replaced him in a by-election held last December. Regrettably, Hon Mukwala passed away on Wednesday 6th September after a very short illness, marking the end of one of the shortest Parliamentary tenures in recent history in Malawi. This means that, yet again, Chitipa Wenya Constituency will see another by-election in less than a year. Politically, it will be significant to observe whether the DPP - the ruling party - will be able to retain this seat as it will be a barometer of its popularity or otherwise. Its total official tally of MPs in the House now stands at five following the death of Hon Mukwala.

10. Malawi's Multilateral Debts Forgiven

Multilateral lenders/donors have forgiven about 90 percent of Malawi's US\$2.9 billion external debt. It is estimated that with this debt relief, Malawi can save as much as K15 billion annually over the next 20 years. This sum is to be used for pro-poor activities, such as the delivery of social services.

11. "Special Clients' Account" - Public Hearing

The Public Accounts Committee summoned a number of Cabinet Ministers and other officials implicated in the "Special Clients' Account" used by jailed former Education Minister Yusuf Mwawa who used K160,550 from the account to fund his wedding. It is claimed that the fund was used to fund activities of a purely political nature. Other than one deputy minister, none of the Ministers summoned actually pitched up claiming that the Committee had no power to summon them. What was probably noteworthy in all this was the fact that this was the first time ever that the PAC deliberations were **open to the public**.

12. NA Independence

The NA has no definitive sitting calendar. The sittings are currently *ad hoc* and convened by the Speaker in consultation with the President. The need to consult the President has been a cause of disagreement with the NA leadership arguing that this makes the NA subservient to the Executive Branch of Government. The Executive can impinge on the ability of the NA to sit by withholding the funding required for it to sit. Currently, the only sitting, which is predictable, is the Budget session which runs from May to July during which the budget is tabled for debate.

One of the objectives of the Project will be to work with all stakeholders so as to identify modalities for the NA to determine its own sitting calendar. During the quarter under review the National Assembly received its entire budget allocation for the whole quarter. In the past, the National Assembly has only received a portion of its monthly allocations and this has hamstrung its operations. If this mode of funding can continue, it will help the National Assembly to become more independent in terms of enabling it to set its own sitting calendar.

B. PROGRAM ACTIVITIES

1. Recruitment of Committee Clerks

The Project Deputy Chief of Party participated in the interviews of candidates for the positions of Committee Clerks. Out of 30 short-listed candidates for the Committee Clerks positions 24 turned up for interviews from which seven candidates have been offered jobs. Of this lot, four will be paid for by the Project during its life and thereafter the NA will take over responsibility for these members of staff. It is hoped that the majority of these will take up their appointments in October. The project will also support the recruitment of three research assistants.

2. Training/Induction for Committee Clerks

It has always been part of the plan to train the new Committee Clerks and other personnel, in the work of the NA. With the new Committee Clerks expected in October, the Project Office has finalized the training materials/modules in preparation for training/induction workshop for the new clerks and other staff. The materials have been reviewed by the NA Management and the workshop is slated for early November.

3. IT Specialist

Following the advertisement of the position of IT specialist, we received about 80 applications. A short list of six candidates was invited for interviews. One declined the invitation. Out of the five who turned up, the panel was unanimous in its assessment that two of these were unsuitable. The position has been offered to the best of the three. Discussions are expected with the best candidate with the view to agreeing terms.

4. Committee Meeting Room

A number of Parliamentary Committees such as the Public Appointments Committee, Public Accounts Committee, and Committee on Commerce & Trade, and the Legal Affairs Committee continued to patronise the committee meeting room. In the quarter under review, we had a total of close to 150 people use the facilities at various times.

5. Parliamentary Resource Center

The installation of a high-speed internet line has been completed and the facilities furnished. The contract for the supply and installation of 15 computers has been awarded. Delivery will occur in October.

6. University Internship Program

The Dean of the Faculty of Law has now prepared an advertisement calling for applications from prospective undergraduate candidates. We plan to recruit the first group of interns for attachment to the NA in December and January.

7. Relationship with the National Assembly

The Project Office's relationship with the National Assembly is at the center of this project. We hold consultations with the NA to ensure that all the activities that the Project implements are of relevance and of the highest priority to the NA. During the quarter under review and during one of such consultations, concern was expressed over the inadequacy of office space. The NA is accommodated in very overcrowded offices in Chief Mbwelwa House. These are rented offices following the decision of the Government to move the NA away from the New State House. Although the House continues to meet at the New State House, all logistical support is provided from Chief Mbwelwa House.

As a result of the inadequate space, the new additional staff envisaged to be supported by the Project as Committee Clerks in addition to the University Interns will have no offices to operate from. It was accepted that this would be a serious handicap and needed to be addressed in order to maximise the

benefits of the Project. On its part, although it had limited resources, the NA was nonetheless prepared to reallocate some of its own resources to buy furniture for the new staff and fund the cost of the move to any new offices. However, the NA asked the Project to fund the cost of the additional offices and some pieces of equipment such as computers, printers, and photocopiers.

It was gratifying to see that USAID granted its approval to SUNY to modify its Task Order in order to increase the total estimated amount of US\$2,890,700 by the amount of \$211,000. This has increased the ceiling to \$3,101,700. The additional resources are to fund additional office space for the National Assembly and finance computer equipment.

Updates:

- *Additional Office Space*
Additional office space for the NA have been identified in Kang'ombe House. The NA has accepted an offer to rent the space from the landlord and the NA expects to take occupation on 1st October.
- *IT Equipment for the NA*
Part of the additional resources provided by USAID will be used to purchase 20 computers, heavy-duty printers and heavy-duty photocopiers for the NA. Working with the NA, the Project Offices have published an advertisement calling for tenders for the supply of these pieces of equipment. Evaluations have been carried out and successful bidders chosen. It is expected that the delivery of these items will be made in November.

8. Technical Assistance to Committees

The Project Office has invited firms to submit capability statements. A database has been created. These have been categorised under name of committee and area of specialisation. As and when there is need for work to be undertaken by consultants, we will resort to this database to short-list a few firms who will then be invited to submit proposals for that particular assignment.

9. Committee Meetings

a. Public Accounts Committee

- A request was received from the PAC for the project to assist in the review and audit of local government accounts whose audits have been outstanding for a very long time. Modalities are being worked out between the Project Office, the Committee and the Auditor General's office on how best to render this assistance.
- The Project is to provide support to the Committee to enable it to participate at a forthcoming conference of the Association of Public Accounts Committees of the Republic of South Africa. The conference takes place in October. The Association's objectives are to enhance capacity, share best practices, and information regarding how public accounts committees can carry out its oversight responsibility effectively. The Project will support two Members and one member of staff to attend the conference.

b. Budget & Finance Committee

Consultations between the Project Office and the committee are in process to determine activities to be undertaken in the wake of the approval of the Government Budget.

c. Reforms Committee

The Reforms Committee met during the quarter under review to map out:

- Strategies for coordinating activities of various committee; and
- How the various donors will work with each other in relation to their support to the NA.

The new approach is yet to be promulgated to stakeholders such as ourselves.

10. MCC Monitoring Visit

Mr. Malik Chaka who is Director responsible for Policy and International Relations for MCA Threshold Countries visited Malawi between 24th and 27th August. He met with NA management as well as Chairs of the Budget & Finance Committee, Legal Affairs Committee and Public Accounts Committee. Overall he seemed satisfied with the foundation that has been made which will provide the basis for implementing the program.

11. Sitting of Parliament

- *2006/2006 Budget*

The Budget session finally did rise on 4th August after some **nine** weeks bringing to an end probably the longest session in the legislative history of the Malawi National Assembly. Six of the nine weeks were almost exclusively devoted to Budget debate and Committee of Supply. The session was characterized by very robust debate previously unknown in this country. The high level of scrutiny demonstrated thorough preparations by the Opposition. The Government, for its part, was quite amenable to the Opposition views. In aggregate, the amendments to the Budget proposed in monetary terms amounted to MK2 billion raising the overall expenditure to MK140.7 billion, up from MK138.7 billion. Out of 54 votes considered by the Committee of Supply, 13– representing 24 percent - were amended. Of note were amendments reducing the allocations to the Presidency, State Residences and Unforeseen expenditures. On the vote for the President's Office, the arguments advanced for the reduction were that it was disproportionately huge. Besides, the lack of specificity on some provisions was seen as a cover by the Executive for covert political activities against the Opposition parties. On the other hand, the Committee of Supply increased the vote allocations on Agriculture and Food Security, Mines and Geological Surveys. With respect to the latter, the Opposition successfully argued that if the Government had prioritized this sector, as they said they had, then this ought to be reflected in the amount of resources allocated to it.

The final showdown was when the Committee of Supply considered the Information and Tourism vote. The Opposition demanded that unless the Minister apologized on the floor of the House for alleged remarks that she had made outside the House against certain members of the Opposition, the vote for her ministry would not be passed. On its part, the Government denied that any apology was in fact owed arguing that the remarks were political in nature and they came with the territory. At any rate, so went the argument, the offending remarks were made outside the House. Even if an apology was owed, which the Government did not accept, such apology ought to be made outside the House. There was therefore an impasse and it did appear at one time that the Government would move that the Budget be passed without the Information and Tourism Ministry vote. With pleas for reasonableness from civil society and some of the independent MPs, the vote was finally approved without amendment.

The quality of deliberations was very high. Were it not for the asymmetrical composition of the House, one could argue without fear of contradiction that the NA is gaining traction on executive oversight. Although this has started to happen but perhaps the events of the last few weeks were fueled by the desire of the Opposition to show the Executive as to who was in control of the NA. It was noteworthy that the Vice President's vote was approved without much ado although the incumbent is not currently discharging any presidential duties because he is said to have constructively resigned his position. Further, the NA vote was increased by MK200 million. This included revised allowances for Members and an increased allocation for committee meetings whose allocation had been so small in previous budgets that most committees were dysfunctional.

- *Budgetary Effectiveness Index*

In order to establish the baseline on *Budgetary Effectiveness of Committees*, the Project office monitored the amendments proposed to the Budget and the extent to which these were accepted by the Executive. This exercise sought to establish the baseline for the *Budgetary Effective Index* for 2006 which is one of the Project's performance monitoring indicators.

The number of amendments to the Budget that have been accepted by the House (*Budgetary Effectiveness Index*) is extraordinary. This is because of the numerical strength of the Opposition and the realization by Government to be accommodative in order to secure the approval of the Budget. The *Budgetary Effectiveness Index* is one of the performance monitoring indicators for the Project. With the current make-up of the House, the *Index* is likely to be distorted and inversely related to the Government numbers in the House. Should the Government MPs go up before next year's budget, the index may swing the other way. Even if the Government is unable to woo more MPs to join its side, given the experience of this year it is likely to employ consultative tactics with the Opposition in the preparation of next year's Budget to ensure an Opposition buy-in. The challenge of the Project will be to improve upon this rather extraordinary number of accepted number of amendments.

A total of **nine** Bills were passed, three which gave effect to the Budget:

- The Appropriation Bill;
- The Value Added Tax (Amendment); and
- The Taxation (Amendment) Bill.

- *Anti-Money Laundering Bill*
The Money Laundering, Proceeds of Serious Crime and Terrorist Financing Bill was considered on the very last day of the budget session, with the NA sitting through lunch in order to pass the bill with a number of very important changes before rising.

- *Oversight Reports*
Two Committee Reports were presented by the Transport and Public Works and Health and Population Committees.

12. House confirms a new IG

Both the Opposition and the Government side of the NA unanimously confirmed Oliver Kumbambe as new Inspector General of Police. The filling of this position was subject of heated debate a few months previously when the Opposition blocked the confirmation of the first lady Inspector General, Mary Nangwale.

C. PROPOSED PROJECT BUDGET MODIFICATION

As noted above, there was request by the NA for support from the SUNY Malawi project for additional space for staff of parliament. Following discussions with USAID, the Clerk of Parliament and SUNY officers, the SUNY/CID Home Office presented a budget modification proposal to USAID/Malawi for an additional \$211,000. These funds would provide for the requested space and enable the project to enhance activities in the work plan and task order. At the time of the preparation of this report, negotiations on this modification between SUNY/CID and USAID were yet ongoing. These are anticipated to be concluded early in the next quarter.
